

By virtue of that admission Tan Ah Lek had adduced evidence at the trial that Tan Song Gou's pickup collided into his stationary taxi and in the absence of other evidence a court is entitled to come to the conclusion that the damage to Tan Ah Lek's taxi as a result of the collision was due to the negligent driving of Tan Song Gou. The appeal is dismissed with costs.

We agree with the observations of Lai Kew Chai, J. that the proper practice, if counsel for a defendant wishes to make a submission of no case to answer, is for the judge to refuse to rule on it unless counsel elects to call no evidence.

Appeal dismissed.

Solicitors: *Khattar, Wong & Partners; Leong & Gay.*

**MOSBERT ACCEPTANCE LTD. & ANOR.
(In Liquidation) v. LIEW CHOON KEE
& ANOR.**

[O. C. J. (Rajah J.) April 16, 1982]
[Singapore — Civil Suit No. 281 of 1980]

Practice and Procedure — Claim against defendants for fraud, etc. — Another claim pending in California on same issue — Court's refusal to hear action — Stay of action until action in California "litigated to a finish" — R.S.C. 1970, O.18 r. 19

In Suit No. 281 of 1980, Writ of Summons issued on January 26, 1980, the first plaintiff, a company incorporated in Hong Kong commenced the proceedings against 4 defendants for damages and for conspiracy in or about August 1975 and thereafter in relation to the affairs of the plaintiffs and against the second defendant for a declaration that he held certain shares in a certain company as constructive trustees for the plaintiffs and for other consequential orders.

On July 23, 1980 the action against the first and fourth defendants was discontinued and the writ of summons was amended to include Mosbert Holdings Ltd. (in liquidation) a company incorporated in Hong Kong, as second plaintiff and Liew Choon Kee & C.K. Lim as first and second defendants respectively.

The plaintiffs claimed against the defendants damages under two heads:

(1) US\$350,000/- being the amount awarded to the defendant in the California proceedings, which the plaintiffs alleged represents a loss to them due to the fraud practised on the California Court by the defendants and

(2) the costs incurred by the plaintiffs in the California proceedings amounting to HK\$4,173,142.21.

Both defendants filed separate summonses stating that the plaintiffs' statement of claim disclosed no reasonable cause of action against the defendants, was frivolous and

A vexatious and was an abuse of the process of the court. The defendants also contended in the alternative, under the inherent jurisdiction of the Court, that this action against the defendants be dismissed on the ground of *res judicata*, the issues in this action having been determined and adjudicated upon in the United States District Court for the Northern District of California in an action.

B Held: as the plaintiffs could not be allowed to run their claim for US\$350,000/- *in tandem* both in California and in Singapore, clearly the Singapore action must be stayed;

C (2) a stay of the proceedings in Singapore would therefore be ordered until the action run in California "has been litigated to a finish" in the American Courts.

Case referred to:

(1) *Wright v. Bennett* [1948] 1 All E.R. 227, 230.

CIVIL SUIT.

D *H. Elias* for first defendant/appellant.
Ho Ung Tuck for second defendant/appellant.
A. Irvine Q.C. with *Denis Murphy* for Liquidator of first and second plaintiffs/respondents.

E *Cur. Adv. Vult*

Rajah J.: In Suit No. 281 of 1980 — Writ of Summons issued on the January 26, 1980 — Mosbert Acceptance Limited (In Liquidation), a company incorporated in Hongkong, commenced proceedings against four Defendants, namely (1) Chuan Hiap Seng (Private) Limited, (2) Liew Koon Chee, (3) C.K. Lim and (4) Robert Shao-An Hsieh, firstly for damages against the Defendants and each of them for conspiracy in or about August 1975 and thereafter in relation to the affairs of the Plaintiff Company and other companies of the Mosbert Group and secondly against the 2nd Defendant for a declaration that he holds certain shares in a certain company as constructive trustee for the Plaintiff and for other consequential orders.

H On the July 23, 1980 the Plaintiff Company wholly discontinued the action against the 1st and 4th Defendants. The Writ of Summons was amended on the September 8, 1981 whereby Mosbert Holdings Limited (In Liquidation) a company incorporated in Hongkong, was brought in as 2nd Plaintiff and the 1st and 4th Defendants were struck out leaving Liew Choon Kee and C.K. Lim as 1st and 2nd Defendants respectively. On the September 12, 1980 the Plaintiffs filed their Statement of Claim wherein the main thrust against the now two Defendants was that as stated in paragraph 23:—

"In the knowledge that Dawe and the Mosbert Group were insolvent as aforesaid Lim and Liew from about the middle of October 1975 onwards, in Singapore, Bangkok, U.S.A. and elsewhere, unlawfully and fraudulently conspired and agreed together to cheat and defraud the Plaintiffs and each of them and to deceive the Plaintiffs' creditors by manufacturing backdated documents purporting to be assignments to Liew of the Tahoe and Fresno Agreements and of the said promissory note for U.S.\$240,000 and purporting to show that the aforesaid loans were made to Dawe personally, and by seeking to claim against Rafton and C.B.S. that Liew as assignee as aforesaid should have the benefit of the said Agreements and any shares allotted thereunder, and of the said promissory note."

Paragraph 24 of the Statement of Claim specifically spelt out the overt acts relating to the said conspiracy and paragraph 25 of the Statement of Claim pleaded,

"Further and in the alternative the Plaintiffs will contend that Lim and Liew, in the course of executing the conspiracy pleaded in paragraph 26 hereof, wrongfully and unlawfully conspired and agreed together to prosecute the said claim in the U.S. District Court relying on the aforesaid back-dated and fraudulently produced documents and false testimony."

The Plaintiffs claimed from the Defendants damages under 2 heads – (1) U.S.\$350,000/- being the amount awarded to the Defendants in the California proceedings, which sum the Plaintiffs alleged represents a loss to them due to the fraud practised on the California Court by the Defendants and (2) the costs incurred by the Plaintiffs in the California proceedings which amount to the somewhat staggering figure of H.K.\$4,173,142.21.

On September 25, 1980 the 1st Defendant filed a summons under Order 18 Rule 19 for an order that:—

"1. The Plaintiffs' Statement of Claim be struck out under Order 18, rule 19, and under the inherent jurisdiction of the court on the ground that it

- (1) discloses no reasonable cause of action against the first Defendant;
- (2) is frivolous and vexatious, and
- (3) in an abuse of the process of the court,

and that the Plaintiffs' action against the first Defendant be dismissed, and that the first Defendant be at liberty to enter Judgment for his costs, including the costs of this application, to be taxed.

2. In the alternative, under the inherent jurisdiction of the Court, that this action against the first Defendant be dismissed on the ground of *res judicata*, the issues in this action having been determined and adjudicated upon in the United States District Court for the Northern District of California in an action (No. C76 – 1720 SAW and related cases).

- A 3. Further, or in the alternative, under the inherent jurisdiction of the court, that this action against the first Defendant be dismissed, or all further proceedings in this action be stayed, on the ground that there is pending in the United States Court of Appeals for the Ninth Circuit an appeal by both the first Defendant, and the Official Receiver and Liquidator of Hongkong, as an interested party, from the United States District Court for the Northern District of California, involving the same subject-matter and relief.
- B

4. In the event of this application being adjourned, either generally, or to a date to be fixed, that all further proceedings in this action be stayed."

- C On the September 30, 1980 the 2nd defendant filed a similar summons seeking the same orders and couched in the same words. From the Court file it appear that these two applications were on the October 17, 1980 ordered to "be adjourned *sine die* with liberty to restore".

- D Matters were allowed to rest until about the end of May 1981 when the two summons were restored and came on for hearing before the learned Registrar on the 26th, 27th and 28th May 1981, when he dismissed the two applications with costs. The Defendants appealed against the learned Registrar's decision and these two summons are now before me for hearing.
- E

During the hearing before me, Mr. Elias, counsel for the 1st Defendant, put his case under the following heads:—

- F (1) Cause of action estoppel;
- (2) Issue estoppel (Both (1) and (2) coming under the general term *res judicata*);
- (3) If not (1) or (2) then abuse of process of Court, to be dealt with under the Court's inherent jurisdiction. Under this head he says that the court takes a wide common sense and overall view;
- G (4) If not (1) or (2) or (3) then stay of proceedings until the litigative process in California is completed with liberty to either side to apply.

- H Mr. Ho Ung Tuck, counsel for the 2nd Defendant, for his part associated himself with Mr. Elias' presentation of the case and his arguments thereon.

- I Mr. Irvine Q.C., counsel for the Plaintiffs, presents his case on the basis that there are six issues in this case.

Issue 1 – Does the Statement of Claim disclose a cause of action recognised by the law of Singapore.

Issue 2 — Does Singapore recognise a cause of action in conspiracy when the damages claim is the costs of fighting an action in a foreign jurisdiction in which costs will not generally be awarded to the successful party and when these costs are not in fact awarded.

Issue 3 — Is the verdict of the jury in the California proceedings capable of giving rise (a) to a cause of action estoppel or (b) to an issue estoppel.

Issue 4 — If the answer to 3(a) or 3(b) is 'Yes' does the fact that the Plaintiffs allege that the California judgment was procured by Defendants' fraud prevent estoppel from founding a summary application to strike out on the ground of *Res Judicata*.

Issue 5 — If the answer to 3(a) and 3(b) is 'No' so that no estoppel results from the decision of the Californian Court does the Court have a discretion to stay or strike out the Singapore proceedings.

Issue 6 — If answer to Issue 5 is 'Yes' should these proceedings be stayed or struck out. If proceedings are to be stayed then what form should the stay take.

Mr. Irvine was firm in his submission that in the circumstances of the instant case he saw no way by which the court could strike out the Statement of Claim on the basis of cause of action estoppel or issue estoppel. However, he did concede that the court had a discretion in a proper case to stay proceedings, such stay to operate according to the facts and needs of each case before the court. Insofar as the instant case is concerned, he did suggest that if stay was to be allowed the stay order should be such that all matters in the action were to be proceed except for the trial of the action which would be stayed until further order.

On the facts of this case as they are now known and in view of how matters stand in the litigative process of the California action, I do not find it necessary to reach a definite conclusion as to whether or not the plea of *res judicata*, which would include cause of action estoppel and issue estoppel, would or would not succeed. For this view I find comfort in the words of Tucker L.J. and Cohen L.J. in the case of *Wright v. Bennett*⁽¹⁾. At page 230 B Tucker L.J. has this to say,

"I agree that that is the result of the cases and that the plea of *res judicata* is not necessarily confined to the

A identical nature of the issues in each action. What has to be considered are the issues and facts which are part of the subject matter of the litigation. I do not think it is necessary, as I have already indicated, to express a view with regard to *res judicata* because I think that this case is one in which the court clearly should exercise the inherent jurisdiction which it has to prevent its own process being used in any way which would be an abuse by calling on defendants in substance and in reality to meet the same old charge."

Again Cohen L.J. at page 231 A said,

C "I do not, however, find it necessary to reach a definite conclusion whether or not the plea of *res judicata* would succeed as I am satisfied on the alternative ground that this is an abuse of the process of the court and it ought to be stayed under the inherent jurisdiction of the court."

D There is, however, the other ground relied on by the Defendants as to whether the proceedings in Singapore is an abuse of the process of the court and whether it ought to be stayed under the inherent jurisdiction of the court.

E The position, as I see it, is that the Plaintiffs are now pursuing in two courts of competent jurisdiction, that of California and Singapore, claims basically and substantially in respect of the same subject matter. If the Plaintiffs were to succeed in their appeal, now awaiting judgment in the California Court of Appeal they would basically have succeeded on the ground that the assignment documents were fraudulent whereupon they would get judgment for U.S.\$350,000/- and they would in fact and in law have to forego their claim in the Singapore action to the said sum of U.S.\$350,000/- They could then perhaps, arguably, proceed on their conspiracy claim, and on this I express no view, for costs incurred in the California proceedings. If on the other hand the Plaintiffs' claim is dismissed on the appeal in California then their plea that there is no clear and unambiguous finding as to the validity of the assignments will no longer be available to them. If this should happen it is difficult to see how they could maintain an action in Singapore for conspiracy to defraud, as alleged by them. And if this were so, quite frankly, I cannot, at the moment, see how they could claim costs when no fraud has been proven against the Defendants.

I It therefore appears to me that, as the Plaintiffs cannot be allowed to run their claim for U.S.\$350,000/- in *tandem* both in California and in Singapore, clearly the Singapore action must be stayed.

What I propose to do is to order a stay of the

proceedings in Singapore until the action run in California *has been litigated to a finish* in the American Courts; there will be an order accordingly. There will be liberty to the parties herein to apply. As to the costs of the summons before the learned Registrar and me they are reserved. There will be no certificate for two counsel in regard to the Summons proceedings. I certify no further argument.

Order accordingly.

Solicitors: *Drew & Napier; Ho Ung Tuck & Co., Godwin & Co.*

A MALAYSIA REPORTS

KRISHNA SREEDHARA PANICKA v. CHIAM SOH YONG REALTY CO. LTD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. and Yusoff Mohamed J.) March 7 & August 18, 1982]
[Johore Bahru — Federal Court Civil Appeal No. 27 of 1981]

Landlord and Tenant — Application for recovery of premises — Whether controlled premises — Premises built before January 31, 1948 — Premises demolished and rebuilt — Extensive alterations and additions — Whether new building created — Claim for double rent — Civil Law Act, 1956, s. 28 (4)(a).

In this case the respondents had made additions and alterations to an old two-storey building known as 25 Jalan Ah Fook, Johore Bahru and converted it into two premises No. 25 and 25A. The appellant became tenant of No. 25A at a monthly rental of \$300/- and No. 25 at a monthly rental of \$680/-. The respondent served notices to quit on both premises. He obtained judgment for possession of No. 25A in the Sessions Court and the appeal to the Federal Court was dismissed — see [1976] 1 M.L.J. 224. The respondent applied for possession of No. 25 Jalan Ah Fook in the High Court and the learned trial judge gave judgment in his favour. The learned trial judge also gave double rent to date from August 1, 1979. The appellant appealed.

Held (1) the learned trial judge was correct in holding that after the alterations and additions the whole building had been rebuilt and became a new building and in giving judgment for possession;

(2) (by a majority, Wan Suleiman F.J. dissenting) the learned trial judge was correct in holding that on the facts the respondent should be given double rent from 1st August 1979 and not from the date of the notice to quit, that is, March 1, 1971.

G Cases referred to:

- (1) *Krishna Sreedhara Panicka v. Chiam Soh Yong Realty Company Ltd.* [1976] 1 M.L.J. 224.
- (2) *Yong Chiang v. Bong Tjhin Oi* [1973] 2 M.L.J. 136.
- (3) *Kai Nam v. Ma Kam Chan* [1956] A.C. 358.
- (4) *Eastern Realty Co. Ltd. v. Chan Hua Seng* [1967] 2 M.L.J. 195.
- (5) *Success Enterprises v. Eng Ah Boon* [1968] 1 M.L.J. 75.
- (6) *Pritam Kaur v. Rajaratnam & Anor* [1970] 2 M.L.J. 109.
- (7) *Tioh Kooi Lan v. Ismailjee* [1972] 1 M.L.J. 64.
- (8) *Crook v. Whitbread* 88 L.J.K.B. 959.

I FEDERAL COURT.

Subra Naicker for the appellant.
N. Jegathesan for the respondent.

Cur. Adv. Vult.